IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

MFA.No. 848 of 2000(A)

OPMV.1472/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM

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APPELLANT/APPLI CANT:

MADHAVAN PILLAI, S/O. SUBRAMANIA PILLAI,
AGED 36, RESIDING AT CHINNATHU, NEAR C.S.I. CHURCH,
PERUMBA ROAD, AYANIMOODU, VEDIVACHANCOIL P.O.,
PALLICHAL VILLAGE, THIRUVANANTHAPURAM DISTRICT.
NOW RESIDING AT KOCHUKARIKATHU VEEDU,
MEMALA, VITHURA P.O., NEDUMANGADU,
TRIVANDRUM DISTRICT.

BY ADV. SRI.J.S. AJITHKUMAR
ADV. SRI.S. ASWAKUMAR

RESPONDENT/RESPONDENT:

KERALA STATE ROAD TRANSPORT CORPORATION LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR,
TRANSPORT BHAVAN, EAST FORT,
THIRUVANANTHAPURAM.

BY ADV. SRI.K. PRABHAKARAN, SC, K.S.R.T.C.

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 15/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.T. SANKARAN, J.

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M.F.A. No. 848 OF 2000

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Dated this the 15th December, 2006

J U D G M E N T

At the time of consideration of the application to condone the delay in filing the appeal , records were called for from the M.A.C.T. and the case was posted for hearing the application for condonation of delay as well as the M.F.A.

2. The application for condonation of delay was allowed and the M.F.A. was heard. The only ground on which the M.A.C.T. dismissed the Original Petition is that the driver of the K.S.R.T.C. was not made a party. It is stated in the impugned award that there is no averment in the petition that the accident happened at the time when the driver was in the regular course of employment under the first respondent, K.S.R.T.C. It is stated in the claim petition that the bus was driven by the bus driver in a rash and negligent manner. It is stated in evidence by P.W.1/claimant that the accident occurred due to the negligence of the driver of the K.S.R.T.C. bus. The First Information Report, Scene Mahazar, charge, report of A.M.V.I, vehicle mahazar and other records were also produced by the claimant.

3. The appendix to the award would indicate that no documentary or oral evidence was adduced before the Tribunal. On a perusal of the records, it is clear that the appendix to the award is incorrect. There is no requirement that the claimant should prove that the bus driver was in the regular course of employment in the K.S.R.T.C. It is clear from the petition as well as evidence that the driver was under the employment of the K.S.R.T.C. The dismissal of the claim petition on the ground that the driver was not made a party, is clearly against the decision of the Division Bench reported in **Anuradha Varma vs. State of Kerala** (**1993 (2) KLT 777**), wherein it was held that an application without impleading the driver is maintainable. Therefore, the award passed by the M.A.C.T. is set aside. The Motor Accidents Claims Tribunal shall dispose of the application on the merits. The parties shall appear before the Motor Accidents Claims Tribunal on 15.01.2007. The Registry shall send back the records to the Tribunal.

M.F.A. is allowed of as above.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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M.F.A. No. 848 OF 2000

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Dated this the 15th December, 2006

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